

In the Court of Appeals of the State of Alaska

David Middleton,

Appellant,

v.

State of Alaska,

Appellee.

Court of Appeals No. **A-13173**

Order

Date of Order: **July 15, 2020**

Trial Court Case No. **3AN-17-09317CI**

Attorney Matthias R. Cicotte, representing the Appellee, has filed a motion asking to supplement the appellate record in this case with documents that he asserts establish facts were not brought to the trial court's attention. The Appellant, represented by Assistant Public Defender Rachel E. Cella, opposes the State's motion (Ms. Cella also moved this Court to accept her late-filed opposition).

In her opposition, Ms. Cella contends that because the trial court made its decision in this case based on a different representation of the facts, a remand to the trial court for additional findings — as opposed to supplementing the appellate record with new facts — is the proper solution. Under the circumstances, the Court agrees with Ms. Cella's position.

Accordingly, **IT IS ORDERED:**

1. The Appellee's motion to supplement the appellate record is **DENIED**.
2. This case is remanded to the superior court to determine whether there are new facts that change its decision in this case and whether these new facts raise new legal issues. If the superior court finds there are new issues, the court shall allow the parties to address those issues.

David Middleton v State of Alaska - p. 2
File No. A-13173
July 15, 2020

3. The trial court's report on this matter is due on or before October 16, 2020. The superior court may request an extension if additional time is required.


4. This case is **STAYED** until **October 16, 2020**, or until the superior court submits its report, whichever occurs first. If litigation in the superior court is not completed by October 16, either party may request a continuance of the stay.

5. Once the superior court's report had been submitted to this Court, the parties will be allowed to submit supplemental briefs to address any legal or factual issues raised by the superior court's report. A briefing schedule will be established at that time.

6. The motion to accept the Appellant's late-filed opposition is **GRANTED**.

Entered under the authority of Chief Judge Allard.

Clerk of the Appellate Courts

A handwritten signature in black ink, appearing to read "Mindi Johnson", is written over a light gray rectangular background.

Mindi Johnson, Deputy Clerk

cc: Court of Appeals Judges
Judge Corey
Trial Court Clerk - Palmer
Distribution:

Email:
Cella, Rachel E., Public Defender
Cicotte, Matthias R.